AUG 1 1941
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 329

EDWARD A. BLAIR,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

JOHN W. GASKINS,
FRED W. SHIELDS,
GEORGE R. SHIELDS,
HERMAN J. GALLOWAY,
Counsel for Petitioner.

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Your petitioner, Edward A. Blair, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled case.

Opinion Below.

The opinion of the Court of Claims is not as yet officially reported.

Jurisdiction.

The judgment of the Court of Claims was entered May 5, 1941. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

Question Presented.

Whether a private Act of Congress providing for the retirement of an officer of the United States Marine Corps,

"with the retired pay and emoluments" of the grade in which he was serving authorizes the payment to him of rental and subsistence allowances?

Statute Involved.

The private Act of Congress of January 30, 1929, (c. 123, 45 Stat. 2043) reads as follows:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President is authorized to appoint Edward A. Blair a second lieutenant of the United States Marine Corps and to retire him and place him upon the retired list of the United States Marine Corps with the retired pay and emoluments of that grade.
>
> "Approved January 30, 1929."

Statement.

The findings of fact of the Court below may be summarized as follows:

The petitioner, Edward A. Blair, a retired second lieutenant of the United States Marine Corps, was on November 12, 1906, appointed a cadet in the United States Revenue Cutter Service, and served as such cadet until May 27, 1908, when his resignation was accepted (Fdg. 1).

On January 22, 1909, he accepted appointment as second lieutenant in the United States Marine Corps (Fdg. 1). He served as an officer of the United States Marine Corps until September 11, 1913, when he was ordered to appear before a Marine Retiring Board, which Board found him incapacitated for active service, and that his incapacity was not the result of an incident of the service (Fdg. 2). On October 22, 1913, the President approved the proceedings and findings of the Board and directed that petitioner be wholly retired from the service in conformity with Sections 1622 and 1252 of the Revised Statutes (Fdg. 2). Petitioner was wholly retired from the service on October 22, 1913 (Fdg. 2).

On January 30, 1929, a private Act of Congress was approved, authorizing the President to appoint petitioner a second lieutenant of the United States Marine Corps and to retire him and place him on the retired list of the United States Marine Corps with the retired pay and emoluments of that grade (Fdg. 3).

Pursuant to the said Act of Congress, petitioner was, on February 14, 1929, appointed a second lieutenant of the United States Marine Corps, with rank from January 30, 1929, which appointment he accepted on February 18, 1929 (Fdg. 3). On the same date he was placed on the retired list of officers of the Marine Corps with the rank of second lieutenant, where he has since remained (Fdg. 3).

Since being placed on the retired list, petitioner has received the retired pay of an officer of his rank and length of service, but has received no rental or subsistence allowances (Fdg. 4).

Petitioner filed suit in the Court of Claims on August 31, 1937, seeking to recover the rental and subsistence allowances of an officer of his grade and length of service (Fdg. 5).

The Court of Claims on March 3, 1941, filed findings of fact, and conclusion of law, holding that petitioner was entitled to recover, but suspended entry of judgment to await a showing of the exact amount due petitioner. Subsequently, on April 7, 1941, the Court entered an order withdrawing its findings, judgment and opinion of March 3, 1941, and held the case under submission to the Court. On May 5, 1941, the Court announced special findings of fact, conclusion of law, and opinion, holding that petitioner was not entitled to recover and ordering that his petition be dismissed.

If entitled to recover rental and subsistence allowances there is due the petitioner $4,625.52, representing the amount

of such allowances for the period from August 31, 1931, to July 31, 1938, the date of the latest available roll on file in the General Accounting Office (Fdgs. 4, 5). His claim, however, is a continuing one.

Specifications of Errors to be Urged.

The Court of Claims erred:

(1) In holding that the private Act of Congress of January 30, 1929, did not authorize and require the payment of rental and subsistence allowances to a Marine Corps officer retired under the provisions thereof.

(2) In holding that the word "emoluments" as used in the private Act did not comprehend rental and subsistence allowances.

(3) In entering judgment against the petitioner and in favor of the United States.

Reasons for Granting the Writ.

1. *Conflict With McLean Decision, 226 U. S. 374, and Earlier Decisions of the Court of Claims.*

The court below, on March 3, 1941, announced a *per curiam* decision in this case, holding that petitioner was entitled to recover the rental and subsistence allowances of an officer of his grade but suspended entry of judgment pending the filing of a computation by the General Accounting Office showing the amount due. The decision is printed as Appendix A to the Petition.

On April 7, 1941, the court below, on its own motion, withdrew its decision in the case, and on May 5, 1941, announced the decision which plaintiff now prays this Court to review.

The original decision in the case followed the decision of this Court in *McLean* v. *United States,* 226 U. S. 374. In that case this Court held that, under a special Act of Con-

gress directing the Accounting Officers to settle and adjust all back pay and emoluments that would have been due and payable to an officer had he actually remained in the Army for a period during which he was out of the Army after his enforced resignation until his reinstatement, the words "all back pay and emoluments" included all allowances of every kind to which he would have been entitled under the pay statutes had he remained continuously in the Army.

The court said (page 381):

> "The words are all-comprehensive. They embrace all the compensation, perquisites and dues to which he was entitled as an officer."

and again the court said (page 383):

> "* * * and the word 'emoluments' is the most adequate that could have been used. It especially expresses the perquisites of an office, and its use in conjunction with 'pay' makes the restitution of the statute complete."

The Court of Claims has also held that the meaning of the words "allowances" and "emoluments" as used in the pay statutes is synonymous. In *Sherburne* v. *United States*, 16 C. Cls. 491, 496, it said:

> "Pay is a fixed and direct amount given by law to persons in the military service, in consideration of, and as compensation for their personal service. Allowances, as they are now called, or emoluments, as they were formerly termed, are indirect or contingent remuneration which may or may not be earned, and which is sometimes in the nature of compensation, and sometimes in the nature of reimbursement."

The foregoing language was quoted with approval in *Wilson* v. *United States*, 44 C. Cls. 428, 435.

It may also be pointed out that counsel for respondent in the court below, in effect, conceded that "emoluments"

were "allowances", the case being submitted by them without argument for determination on the facts, (about which there was no dispute), the Special Act involved and the decisions of the court below in *Sweeney* v. *United States*, 82 C. Cls. 640, and *Ralston* v. *United States*, 91 C. Cls. 91, certiorari denied, 311 U. S. 687.

In the *Sweeney* and *Ralston* cases, the court below had held that officers retired under Special Acts of Congress providing for the payment to them of the retired pay and allowances of their respective grades were entitled to receive rental and subsistence allowances.

Despite the well settled meaning of the word "emoluments" the court below, with two judges disagreeing on this point, refused to give it its usual meaning.

One of the grounds stated in Rule 38, Paragraph 5, Section b, for the granting of a Writ of Certiorari, is:

> "Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court on the same matter," etc.

Here the case is even stronger. The court below first announced a decision favorable to the petitioner, which it subsequently withdrew on its own motion and then two months later announced a decision in favor of the respondent, which last decision is in complete conflict with the decision of this Court in *McLean* v. *United States, supra,* as well as the earlier decisions of the court below in *Sherburne* v. *United States, supra,* and *Wilson* v. *United States, supra.*

2. *Importance of Issue Involved.*

While this immediate case involves the construction of a private Act, the question presented, involving as it does the meaning of language frequently used by Congress in legislating for the armed services, is nonetheless of substantial general importance. The term "emoluments" has a long-established and clearly understood meaning in the military

and naval services. The Congress has repeatedly used that term in both the general pay statutes and in special Acts. Its meaning was conclusively established by a decision of this Court in the *McLean* case, *supra*. The construction which the majority of the court below has given the special Act here involved renders the word "emoluments" meaningless and superfluous for all practical purposes. It is of course an elementary rule of statutory construction that effect must be given to every word and clause, if possible, avoiding any construction which implies that Congress was ignorant of the meaning of the language it employed or that it used meaningless or superfluous words. *Montclair* v. *Ramsdell*, 107 U. S. 147; *United States* v. *Fisher*, 109 U. S. 143. The decision of the Court below casts doubt upon the established meaning of the term "emoluments" and it is important that Congress be in the position to employ language having an established and well-settled meaning in legislating for the armed services.

There is at the present time one case pending in the court below involving the identical question here presented and another case involving substantially the same question.[1]

Merits of the Case.

The merits of the case sufficiently appear from what has been previously said. The court below has failed to follow the decision of this Court, as well as its own earlier decisions. The case affects the substantial rights of several officers on the retired list.

In exercising its discretionary appellate jurisdiction, this Court may consider the circumstance that the court below has exclusive jurisdiction of these controversies. *Cf. Paramount Publix Corporation* v. *American Tri-Ergon Corporation*, 293 U. S. 328, 294 U. S. 464.

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[1] *Horton* v. *United States*, C. Cls. No. 43,670. *Willey* v. *United States*, C. Cls. No. 43,644.

Conclusion.

It is respectfully submitted for the reasons stated this petition for a writ of certiorari should be granted.

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